

Application No. 10/771,679
Paper Dated: November 9, 2007
Response to Office Action dated August 9, 2007
Attorney Docket No. 3896-040076 (P-5974)

REMARKS

The Applicants would like to thank the Examiner for indicating that the subject matter of claims 33-36 define over the prior art of record. Specifically, the Examiner has indicated that claims 33-36 would be allowable if rewritten in independent form including the base claim and any intervening claims.

The application has been amended. In particular, claim 26 has been amended to further define the positioning of the recess on the inner surface of the outer tube (and to remove the words “adjacent the open top of the inner tube”). Support for the amendments to claim 26 can be found in paragraphs [0054] and [0056] as well as in Figs. 7-8D of the specification. Claims 30 and 36 have been cancelled. New claim 49 has been added and depends from claim 26. The abstract of the disclosure has been amended to conform to USPTO requirements. No new subject matter is added by these amendments. In view of the above amendments and the following remarks, reconsideration is respectfully requested.

Election/Restriction

In the Office Action dated August 9, 2007, restriction was required between the following species:

Species A: Figs. 2-6;

Species B: Figs. 7-9B;

Species C: Fig. 10

Applicants hereby elect Species B for further prosecution. Applicants submit that claims 26-36 are readable thereon, and make this election without traverse. Applicants respectfully reserve the right to prosecute divisional applications directed to these species.

Drawings and Specification

The drawings are objected to under 37 CFR § 1.83(a) for failing to show every feature of the invention specified in the claims. Specifically, the Examiner objected to the feature having a “longitudinal groove extending between the recess on the inner surface of the outer tube to the open end of the outer tube.” The Applicants believe the cancellation of claim 36 corresponding to the feature objected to under 37 CFR § 1.83(a) overcomes the objection.

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The abstract of the disclosure is objected to for containing the phrase, "The present invention is directed to." The Applicants believe that the above amendment removing the objected to phrase overcomes the objection.

Reconsideration and withdrawal of these objections are respectfully requested.

Claim Rejections

Claims 26-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Morony et al. (U.S. Patent No. 4,771,911). Claims 33-36 are objected to as being dependant upon a rejected base claim. These rejections are respectfully traversed.

With regard to independent claim 26, the Office Action states that the Morony reference discloses a method of assembling a container comprising an inner tube (13) contained within an outer tube (12) having an inner surface and an outer surface, where the inner surface of the outer tube has a recess adjacent to the open top thereof.

Amended claim 26 defines the recess on the inner surface of the outer tube as being below the open top of the outer tube. As shown in Figs. 7-8D, the recess located below the open top portion (20a) permits the outwardly flared portion (36a) to engage a top edge (72) of the recess (70) giving the assembly additional functionality. For example, the outwardly flared portion can engage the top edge of the recess to secure the inner tube within the outer tube.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Morony reference does not disclose a recess *below* the open top of the outer tube. As shown in Fig. 2, Morony discloses a recess on the inner surface of outer tube (12) which extends through the open top portion of outer tube (12).

Because the Morony patent does not teach a recess below the open top of the outer tube, the Morony reference does not anticipate claim 26. Claims 27-29 and 31-35 depend from independent claim 26 and are patentable for the reasons discussed with regard to independent claim 26. Applicants respectfully request reconsideration of the rejections.

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Should the Examiner have any questions regarding this information or wish to discuss this matter in further detail to advance prosecution, the Examiner is invited to contact Applicant's undersigned representative by telephone at 412-471-8815.

Respectfully submitted,

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